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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,248	08/20/2003	Mark Timothy Bennett	102792-158	7552
27380 7590 02/20/2008 NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022				
EXAMINER				
KUMAR, PREETI				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
02/20/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/645,248

Applicant(s)

BENNETT ET AL.

Examiner

PREETI KUMAR

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 13-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) none is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF-08)
- Paper No(s)/Mail Date 8/11/04.8/20/03
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/1/2007 has been entered.
2. Claims 1-8 and 13-24 are pending for examination. Claim 1 is independent and Claims 23 and 24 are newly added by amendment.

Priority

3. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(a)-(d) based upon an application filed in United Kingdom 0104153.2 on 2/20/2001.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must not enter new matter. The drawings submitted on 11/1/2007 introduce a plethora of viruses, yeasts, spores, protozoa; none of which can be found in Applicants original disclosure. Each and every virus in each of the 3 "bubbled-arrows" need to have support in the disclosure as originally filed. Also, each of the microbes listed in the rectangular box also need to have support in the disclosure as originally filed.

Response to Amendment

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5. The rejection of claims 1-4, 12-15 and 17-21 under 35 U.S.C. 102(b) as anticipated by Casey et al. (US 4,678,658) is withdrawn in light of Applicants amendments to the viruses for which antimicrobial efficacy is claimed.
6. The rejection of claims 5-7, 16 and 22 under 35 U.S.C. 103(a) as being unpatentable over Casey et al. (US 4,678,658) in view of Coates et al. (EP 0 099 209) is withdrawn in light of Applicant's amendments to the viruses for which antimicrobial efficacy is claimed.

Response to Arguments

7. Applicant's arguments filed 11/1/2007 with respect to claims 1-8 and 13-24 have been considered but are moot in view of the new ground(s) of rejection.

.New Grounds of Rejection

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-8 and 13-24 are rejected under 35 U.S.C. 102(e) as anticipated by Zhou et al. (US 6,080,387).

Zhou et al. teach an antimicrobial hard surface cleaner. See col.3,ln.8.

Regarding the claimed hard surface treatment composition comprising:

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an alcohol constituent selected from the group consisting of methanol, ethanol, n-propanol, isopropanol, n-butanol, benzyl alcohol, and mixtures thereof which is present in an amount of from about 40 and 70 weight percent; Zhou et al. teach in col.6, that the alkanol can be selected from methanol, ethanol, n-propanol, "isopropanol," the various positional isomers of butanol, pentanol, and hexanol, and mixtures of the foregoing. It may also be possible to utilize in addition to, or in place of, said alkanols, the diols such as methylene, ethylene, propylene and butylene glycols, and mixtures thereof, and including polyalkylene glycols. Zhou et al. motivate one of ordinary skill to preferentially utilize ethanol, which advantageously acts as both a solvent, to maintain the ingredients in the liquid composition in dispersion, as well as a disinfectant. If mixtures of solvents are used, the amounts and ratios of such solvents used are important to determine the optimum performances of the inventive composition. It is preferred to have the total amount of solvent to at least 20%, more preferably least 30%, and most preferably, at least 50%, of the composition. A preferred range is about 20-99.9%. These amounts of solvents are generally referred to as dispersion effective or solubilizing effective amounts, since the other components, such as surfactants, are materials which are assisted into solution by the solvents. As in the case of ethanol, the solvent can also have disinfectancy capacity itself. Finally, the solvent is also important as a cleaning materials itself, helping to loosen and solubilize certain soils for easy removal from the surface treated. See col.6,ln.15-40.

Regarding the claimed pH adjusting agent such that the pH range of the composition is from about 7.0 to about 13.0; Zhou et al. teach in col.9, the utility of pH

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buffering agents to maintain a constant pH (which for the invention is between about 5-14, more preferably between about 8-13; formulations containing the tripotassium and/or triammonium salts will naturally be at a lower end of the range as compared to the corresponding tetra salts). These buffers include, for example, NaOH, KOH, Na.sub.2 CO.sub.3, and K.sub.2 CO.sub.3 as alkaline buffers, and phosphoric, hydrochloric, sulfuric, and citric acids as acidic buffers. See col.9,ln.10-20.

Regarding the optional, one or more constituents selected from the group consisting of antimicrobials, corrosion inhibitors, perfumes, perfume carriers, deodorants, organic solvents, surfactants, propellants, pH buffers, organic acids, fungicides, film-forming polymers, and anti-oxidants; and water, to 100 weight percent, Zhou et al. teach the aerosol formulation comprises an antimicrobial composition that is mixed with a propellant. The composition has the following ingredients:

(a) an anionic polymer or prepolymer; (b) a quaternary ammonium compound, the components (a) and (b) combining to form an antimicrobially effective complex; (c) at least one water-soluble or dispersible organic solvent having a vapor pressure of at least 0.001 mm Hg at 25.degree. C., said at least one organic solvent present in a solubilizing--or dispersion--effective amount; (d) an effective amount of a propellant; and (e) the remainder, water. See abstract and col.1,ln.60-col.2,ln.5.

Regarding the claimed antimicrobial efficacy against one or more of: *Pseudomonas aeruginosa*, *Enterococcus hirae*, *Aspergillus niger*, *T. mentagrophytes*, Hepatitis A, Poliovirus Type 1, Coxsachievirus, Rotavirus, or Rhinovirus; Zhou et al. illustrate by example in col.11-12, the prior art composition comprising

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Buffer (NaOH) 0.007

Dispersing/emulsifying/wetting agent.sup.1 0.03

Fragrance.sup.2 0.25

Corrosion Inhibitor.sup.3 0.6

Quaternary Ammonium Compound.sup.4 0.63

Anionic Polymer.sup.5 1.05

Propellant.sup.6 10

Water 122.433

Ethanol 65

Total % by weight =100 resulting in complete inactivation of each of the viruses in table II, and each of the fungi in table III (which encompass the claimed virucidal activity to Poliovirus Type 1 and antifungal activity to *Aspergillus niger*, and *T. mentagrophytes*). Accordingly, the exemplary teachings of Zhou et al. anticipate the material limitations of the instant claims.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PREETI KUMAR whose telephone number is (571)272-1320. The examiner can normally be reached on 7:30 am-3:30 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. K./
Examiner, Art Unit 1796

/VASUDEVAN S. JAGANNATHAN/
Supervisory Patent Examiner, Art Unit 1796